

1 QUINN EMANUEL URQUHART & SULLIVAN, LLP

Claude M. Stern (Bar No. 96737)

2 claudestern@quinnemanuel.com

Evette D. Pennypacker (Bar No. 203515)

3 evettepennypacker@quinnemanuel.com

Michael F. LaFond (Bar No. 303131)

4 michaellafond@quinnemanuel.com

555 Twin Dolphin Dr., 5th Fl.

5 Redwood Shores, California 94065

Telephone: (650) 801-5000

6 Facsimile: (650) 801-5100

7 Derek J. Tang (Bar No. 296230)

derektang@quinnemanuel.com

8 50 California St., 22nd Fl.

San Francisco, California 94111

9 Telephone: (415) 875-6600

Facsimile: (415) 875-6700

10 Attorneys for uCool, Inc.

11
12 UNITED STATES DISTRICT COURT

13 NORTHERN DISTRICT OF CALIFORNIA

14 SAN FRANCISCO DIVISION

15
16 Blizzard Entertainment, Inc., and Valve
Corporation,

17 Plaintiffs,

18 v.

19 Lilith Games (Shanghai) Co. Ltd., and
20 uCool, Inc.,

21 Defendants.

CASE NO. 3:15-cv-04084-CRB

**THE DECLARATION OF MICHAEL
LAFOND FILED IN SUPPORT OF
DEFENDANT UCOOL, INC.'S MOTION
TO DISMISS**

Date: March 25, 2016

Time: 10:00 a.m.

Courtroom: 6, 17th Floor

Judge: The Hon. Charles R. Breyer

1 I, Michael F. LaFond, declare as follows:

2 1. I am an attorney licensed to practice in the State of California and am admitted to
3 practice before this Court. I am an associate with the law firm Quinn Emanuel Urquhart &
4 Sullivan, LLP, counsel for Defendant uCool, Inc. I have personal knowledge of the matters set
5 forth in this Declaration, and if called as a witness I would testify competently to those matters.

6 2. On February 8, 2016, I accessed the Copyright Office's website at
7 <http://www.copyright.gov>. Using that website, I searched the public catalogue of copyright
8 registrations for any registration in a work entitled either "Defense of the Ancients" or "DotA." I
9 was unable to locate a registration under either title.

10 3. I have personally knowledge of the following documents attached as exhibits to
11 this declaration.

12 4. Attached as **Exhibit 1** is a true and correct copy of an "Intellectual Property
13 Transfer and Confidentiality Agreement" entered into by Valve Corporation, dated September 27,
14 2010, produced by Plaintiffs in this action and stamped with the Bates range VALVE0003594 -
15 VALVE0003597.

16 5. Attached as **Exhibit 2** is a true and correct copy of an "Asset Purchase and License
17 Agreement" entered into by Valve Corporation, dated May 24, 2010, produced by Plaintiffs in this
18 action and stamped with the Bates range VALVE003589 - VALVE003593.

19 6. Attached as **Exhibit 3** is a true and correct copy of a "Settlement and Assignment
20 Agreement" entered into by Blizzard Entertainment, Inc., produced by Plaintiffs in this action and
21 stamped with the Bates range BLIZZ006854 - BLIZZ006862.

22 7. Attached as **Exhibit 4** are true and correct copies of Copyright Monographs
23 downloaded from Copyright.gov on February 4th, 2016 for the registrations asserted by Blizzard
24 Entertainment, Inc. in Schedule A to the First Amended Complaint. The registration numbers are:
25 TX 6-881-506, TX 6-910-360, TX 6-941-251, TX 6-943-737, TX 6-955-156, TX 6-984-959, TX
26 6-987-154, TX 7-042-460, TX 7-031-777, TX 7-084-279, TX 7-086-699, TX 7-059-438, TX 6-
27 889-153, TX 6-938-392, TX 6-970-827, TX 6-851-500, TX 7-075-040, TX 7-066-185, TX 7-085-
28 034, TX 6-995-397, TX 7-038-930, TX 6-927-200, TX 6-932-305, TX 6-971-053, TX 6-965-173,

1 TX 6-910-348, TX 6-953-119, TX 7-038-900, TX 6-933-270, TX 7-607-222, VA 1-797-367, PA
 2 0001787529, PAu 003573039, PA 0001887284, PA 0001867193, PA 0001829416, PA
 3 0001687433, PAu 003447800, PA 0001146503, PA 0001225976, PA 0001711157, PA
 4 0001806462, PA 0001333913, PA 0001932646, PA 0001611882, PA 0000822523, PA
 5 0000875327, PA 0001072560, PA 0001082161, PA 0001225976, PA 0001247131, TX
 6 0005984004, PA 0001951722.

7 8. Attached as **Exhibit 5** is a true and correct copy of the Copyright Registration for
 8 DOTA 2 registered to Valve Corporation, produced by Plaintiffs in this action and stamped with
 9 the Bates range VALVE003525 - VALVE003528.

10 9. Attached as **Exhibit 6** is a true and correct copy of the webpage located at the URL
 11 www.thewarcenter.com/forums/index.php?showtopic=19852 as it appeared on December 12,
 12 2004, printed using the Internet Archive's Wayback Machine on February 5, 2016.

13 10. Attached as **Exhibit 7** is a true and correct copy of Blizzard Entertainment, Inc.'s
 14 Notice of Opposition and Opposition, filed in Trademark Trial and Appeal Board Opposition No.
 15 91202571, docketed at Document No. 1, downloaded from USPTO.gov on February 4, 2016.

16 11. Attached as **Exhibit 8** is a true and correct copy of Valve Corporation's Answer,
 17 filed in Trademark Trial and Appeal Board Opposition No. 91202571, docketed at Document No.
 18 4, downloaded from USPTO.gov on February 4, 2016.

19 12. Attached as **Exhibit 9** is a true and correct copy of Plaintiff Valve Corporation's
 20 response to the First Set of Interrogatories of Defendant uCool, Inc., Interrogatory No. 1.

21 13. Attached as **Exhibit 10** is a true and correct copy of screenshots captured on
 22 February 7, 2016 from THE LORD OF THE RINGS: RETURN OF THE KING (New Line Cinema, 2003),
 23 at 1:27:32 and 1:27:39, as available from Amazon Video.

24 14. Attached as **Exhibit 11** is a true and correct copy of screenshots captured on
 25 February 7, 2016 from PIRATES OF THE CARIBBEAN: THE CURSE OF THE BLACK PEARL (Walt
 26 Disney Pictures, 2003), at 1:55:36 and 1:55:50, as available from Amazon Video.

1 15. Attached as **Exhibit 12** is a true and correct copy of the cover, title page, and pages
2 190-93 of Jason Colativo's *Jason and the Argonauts Through the Ages* (McFarland 2014)
3 captured from Google Books on February 8, 2016.

4 16. Attached as **Exhibit 13** are true and correct copies of Exhibits filed in *Games*
5 *Workshop Limited v. Charterhouse Studios LLC.*, Case No 1:10-cv-08103 (N.D. Ill. 2010), at
6 Docket Entries 213-12, 213-18, and 213-21.

7 17. Attached as **Exhibit 14** is a true and correct copy of a September 14, 2014
8 Washington Post article that contains photographs of a man in a space suit, downloaded from
9 washingtonpost.com on February 8, 2016. The photograph can also be found at
10 <http://www.washingtonpost.com/sf/national/2013/09/14/the-skies-the-limits/>.

11 18. Attached as **Exhibit 15** is a true and correct copy of a July 20, 2015 Washington
12 Post article that contains an image of a space helmet with a orange-yellow faceplate, downloaded
13 from washingtonpost.com on February 8, 2016. The photograph can also be found at
14 [https://www.washingtonpost.com/news/arts-and-entertainment/wp/2015/07/20/air-and-space-](https://www.washingtonpost.com/news/arts-and-entertainment/wp/2015/07/20/air-and-space-museum-partners-with-kickstarter-to-fund-the-display-of-neil-armstrongs-apollo-11-spacesuit/)
15 [museum-partners-with-kickstarter-to-fund-the-display-of-neil-armstrongs-apollo-11-spacesuit/](https://www.washingtonpost.com/news/arts-and-entertainment/wp/2015/07/20/air-and-space-museum-partners-with-kickstarter-to-fund-the-display-of-neil-armstrongs-apollo-11-spacesuit/).

16 19. Attached as **Exhibit 16** is a true and correct copy of a screenshot of "War Chief" as
17 depicted in Heroes Charge, captured using an iPhone 6 on February 2, 2016.

18 20. Attached as **Exhibit 17** is a true and correct copy of a screenshot of "Rifleman" as
19 depicted in Heroes Charge, captured using an iPhone 6 on February 1, 2016.

20 21. Attached as **Exhibit 18** is a side-by-side comparison, created on February 8, 2016,
21 of Blizzard's "King Leoric," as represented in Plaintiffs' First Amended Complaint, and uCool's
22 "War Chief," from Exhibit 16.

23 22. Attached as **Exhibit 19** is a side-by-side comparison, created on February 8, 2016,
24 of Blizzard's "Terran Marine" as represented in Plaintiffs' First Amended Complaint, and uCool's
25 "Rifleman" from Exhibit 17.

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2 I declare under penalty of perjury under the laws of the United States of America that the
3 foregoing is true and correct.

4 DATED: February 8, 2016

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